

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A RETIRED
MEMBER OF THE STATE BAR OF
ARIZONA,**

**ROBERT TRUMAN HUNGERFORD
Bar No. 014717,**

Respondent.

PDJ 2023-9019

FINAL JUDGMENT AND ORDER

(State Bar No. 22-0708)

FILED SEPTEMBER 1, 2023

The hearing panel rendered its Decision and Order Imposing Sanctions on July 31, 2023. No timely appeal was filed.

IT IS THEREFORE ORDERED that **ROBERT TRUMAN HUNGERFORD, Bar No. 014717**, is reprimanded for his conduct in violation of the Nevada Rules of Professional Conduct, as outlined in the hearing panel's decision.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$4,190.30 within 30 days. There are no costs or expenses incurred by the office of the Presiding Disciplinary Judge in these proceedings.

DATED this 1st day of September, 2023.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing emailed
this 1st day of September, 2023, to:

Robert Truman Hungerford
Rth3439@outlook.com

James D. Lee
LRO@staff.azbar.org

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A RETIRED
MEMBER OF THE STATE BAR OF
ARIZONA,**

**ROBERT TRUMAN HUNGERFORD
Bar No. 014717**

Respondent.

PDJ 2023-9019

**DECISION AND ORDER
IMPOSING SANCTIONS**

(State Bar No. 22-0708)

FILED JULY 31, 2023

Procedural History¹

The State Bar filed a formal complaint against Respondent Robert Truman Hungerford on March 13, 2023. The State Bar subsequently filed a motion for summary judgment, which the Presiding Disciplinary Judge (PDJ) granted in part, finding that, as a matter of law, Mr. Hungerford violated Nevada Rules of Professional Conduct 5.5(a)(1), 5.5(c), 5.5(d)(2), and 8.4(c). After that ruling issued, the State Bar advised that it would not pursue the additional alleged violation of ER 8.4(b), and the previously scheduled disciplinary hearing was converted to an aggravation/mitigation hearing.

The aggravation/mitigation hearing was held on July 24, 2023, before a hearing panel comprised of PDJ Margaret H. Downie, attorney member Stephen Weiss, and

¹ The ethical violations for which Mr. Hungerford is being sanctioned were resolved by way of partial summary judgment. The PDJ's partial summary judgment ruling is appended to this decision as Attachment "A." The hearing panel does not repeat the findings of fact and conclusions of law set forth in that ruling but incorporates them herein by reference.

public member Jim Deitz. Senior Bar Counsel James D. Lee appeared on behalf of the State Bar. Mr. Hungerford appeared on his own behalf. Exhibits 1-10 were received into evidence. Mr. Hungerford testified, as did Eddie Jewell. The parties presented additional evidence and argument.

Having considered the matters presented, the hearing panel concludes that a reprimand is the appropriate sanction, as well as an award of costs to the State Bar.

SANCTIONS DISCUSSION

Sanctions imposed against lawyers “shall be determined in accordance with the American Bar Association’s *Standards for Imposing Lawyer Sanctions* (“ABA Standards”). Rule 58(k), Ariz. R. Sup. Ct. In fashioning an appropriate sanction, the hearing panel considers the duty violated, the lawyer’s mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *See In re Scholl*, 200 Ariz. 222, 224 (2001).

Mr. Hungerford violated ethical duties owed to the public and to the profession. He knew that he held only retired member status in Arizona and that he was not admitted to practice law in any other jurisdiction. He nevertheless provided legal services to Shawn K. Brown.

The State Bar relies on the following ABA Standards:

- Standard 4.63: Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.
- Standard 5.13: Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty,

fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

- Standard 5.14: Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.
- Standard 7.3: Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

Aggravating and mitigating factors must be supported by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011). The record supports the following aggravating factors:

- **9.22(b) dishonest or selfish motive**: Mr. Hungerford had a pecuniary motive for engaging in the unauthorized practice of law.
- **9.22(g) refusal to acknowledge the wrongful nature of his conduct**: This aggravating factor is troubling to the hearing panel. *See, e.g., Bemis*, 189 Ariz. at 122-23 ("Although respondent has no prior disciplinary record in ten years of practice, he apparently still fails to recognize the wrongful nature of his conduct. . . . The court is most concerned with respondent's refusal to accept that his conduct cannot be justified by any perceived unfairness in the judges' rulings."). At no point during these proceedings has Mr. Hungerford acknowledged any wrongdoing or any understanding of the limitations imposed on him by virtue of his retired member status. On the contrary, he portrays himself as the victim of an unfair prosecution by the State Bar.

- **9.22(i) substantial experience in the practice of law.**

The record supports one mitigating factor: **9.32(a) absence of a prior disciplinary record.**

Although the ABA Standards arguably support a sanction harsher than reprimand because Mr. Hungerford knowingly engaged in the practice of law while holding only retired member status (*see, e.g.*, Standards 4.62, 7.2), it is unclear whether a harsher sanction would have any meaningful effect given Mr. Hungerford's retired status. Under the unique circumstances of this case, the hearing panel will adopt the sanction advocated by the State Bar, which is amply supported by the record.

The hearing panel does not make a restitution award. Conflicting evidence was presented regarding ownership of the funds from which Mr. Hungerford was paid. The power of attorney Mr. Jewell signed in favor of Mr. Hungerford is not in the record, though the revocation of that power of attorney is. Mr. Jewell testified that litigation is pending with Mr. Hungerford that relates, at least in part, to alleged financial obligations. Furthermore, although the record includes Mr. Hungerford's invoice for \$4500 for work he completed for Mr. Brown, that same invoice's itemization of \$1800 in legal fees does not clearly apply to work performed for Mr. Brown. Our ruling regarding restitution is not a determination on the merits and is obviously without prejudice to Mr. Jewell's ability to seek restitution from Mr. Hungerford in a different forum.

CONCLUSION

For the reasons stated, the hearing panel orders as follow:

1. Mr. Hungerford is reprimanded for his conduct in violation of the Nevada Rules of Professional Conduct.
2. Mr. Hungerford shall pay the State Bar's costs and expenses incurred in these proceedings.

A final judgment and order will be entered at a later date.

DATED this 31st day of July, 2023.

Margaret H. Downie, Presiding Disciplinary Judge

Stephen Weiss, Attorney Member

Jim Deitz, Public Member

Copy of the foregoing emailed
this 31st day of July, 2023, to:

Robert Truman Hungerford
Rth3439@outlook.com

James D. Lee
LRO@staff.azbar.org

by: SHunt

ATTACHMENT A

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A RETIRED
MEMBER OF THE STATE BAR OF
ARIZONA,**

**ROBERT TRUMAN HUNGERFORD,
Bar No. 014717**

Respondent.

PDJ 2023-9019

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT**

(State Bar No. 22-0708)

FILED JUNE 26, 2023

The Presiding Disciplinary Judge (PDJ) has reviewed the briefing submitted in connection with the State Bar's Motion for Summary Judgment. For the following reasons, the PDJ concludes summary judgment in favor of the State Bar is appropriate as to all but one of the ethical violations alleged in the formal complaint filed March 13, 2023.

Rule 56 of the Arizona Rules of Civil Procedure applies in attorney discipline proceedings. *See* Rule 48(b), Ariz. R. Sup. Ct. Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Rule 56(a), Ariz. R. Civ. P. When, as here, the movant has made a *prima facie* showing under Rule 56(a), the burden shifts to the non-moving party to produce sufficient competent evidence to defeat summary judgment. *See GM Development Corp. v. Community American Mortgage Corp.*, 165 Ariz. 1, 5 (App. 1990); *Nat'l Bank of Ariz. v. Thurston*, 218 Ariz. 112, 119, ¶ 26 (App. 2008).

Mr. Hungerford was admitted to the State Bar of Arizona on January 12, 1993; he has held retired member status with the State Bar since November 3, 2010. As a retired member, he remains subject to the Arizona Rules of Professional Conduct. "Retired members shall not practice law in any state, district, or territory of the United States." Rule 32(c)(6), Ariz. R. Sup. Ct.

The State Bar alleges that, while a retired member, Mr. Hungerford engaged in the practice of law on behalf of Shawn K. Brown. The following facts are undisputed:

- In 2018, Shawn K. Brown was convicted of first-degree murder in Nevada. He was sentenced to a life sentence without the possibility of parole. Mr. Brown is incarcerated in a Nevada prison.

- Mr. Brown retained Mr. Hungerford to help him prepare a brief to be filed in the Supreme Court of Nevada, seeking vacation of his conviction and a new trial. Mr. Brown's cellmate – Eddie Jewell – agreed to pay Mr. Hungerford's fees and costs.
- Mr. Hungerford prepared a document entitled "Contract for Legal Representation Of Mr. Shawn M. [sic] Brown," which he signed on March 18, 2021. That document states:

Mr. Shawn K. Brown, hereinafter known as Shawn, agrees to employ Dr. Robert Truman Hungerford, Arizona Bar #14717, as his attorney of record in all legal proceedings, beginning in March of 2021.

This contract will especially deal with:

- 1) Shawn's negotiations with the Nevada Prison System, especially with the Warden's Office in the particular prison where Shawn is living at any given time.
 - 2) The difficult matter of obtaining some relief, IF POSSIBLE, for Shawn in regard to his murder conviction. Both Shawn and RT Hungerford AGREE THAT IT MAY NOT BE POSSIBLE. The attempt will be made, within the bounds of the law, but the outcome cannot be foreseen by us mortals.
 - 3) Dr. Hungerford is to be remunerated at the rate of \$100 an hour as a favor to Shawn, as he is a friend of Eddie Jewell's. (The current rate in Arizona is \$300-\$500 an hour, depending on the size of the firm and the nature of the litigation.)
 - 4) The day to day details are to be conducted by both Shawn and Bob (RT Hungerford), as is normal in any attorney-client relationship.
- Mr. Hungerford mailed the Contract for Legal Representation to Mr. Brown in an envelope bearing the following return address:

ROBERT TRUMAN HUNGERFORD
Attorney at Law
 2309 E. Hawthorne Street
 Tucson, Arizona 85719
 Arizona Bar #014717
 Pima Bar #64706

Mr. Hungerford included a cover letter dated March 19, 2021, that directed Mr. Brown to sign the Contract for Legal Representation, retain a copy for himself, and return the signed contract to Mr. Hungerford.

- Mr. Brown signed the Contract for Legal Representation on March 22, 2021.
- Mr. Brown's sister provided Mr. Hungerford with legal documents, including trial transcripts.
- Mr. Brown relied on Mr. Hungerford to prepare a brief for filing in the Nevada Supreme Court. Mr. Hungerford had multiple telephone conversations with Mr. Brown about the content and drafting of the brief, and he explained why he was preparing the brief for Mr. Brown to file *pro se*.
- On June 2, 2021, Mr. Hungerford sent an email to the Nevada Department of Corrections, asking to schedule a telephonic interview between "the undersigned attorney and my client: Shawn K. Brown, #1159353."
- Mr. Hungerford sent Mr. Brown correspondence dated June 12, 2021, stating he was "[b]urning the candle at both ends and in the middle, to get your appeal done . . ." Mr. Hungerford further explained that the brief he prepared had "a genuine 'inmate look'" and advised he had included Mr. Brown's "point about *cumulative error*" because that was a good, thoughtful point."
- Mr. Brown signed and filed the brief Mr. Hungerford drafted in the Nevada Supreme Court.
- A June 28, 2021, invoice Mr. Hungerford prepared identifies a \$4500 charge for "Appeal to the Nevada Supreme Court (SP82589), for Eddie Jewell's cellmate -Shawn K. Brown #1159353."
- On August 7, 2021, Mr. Hungerford sent correspondence "to" Eddie Jewell and Shawn Brown "From: Your enraged lawyer who, by the grace of God, has calmed down." Mr. Hungerford stated, in pertinent part:

Shawn is not being "blown off" or ignored. The LEGAL point is that I ADDRESSED EVERY WINNING ARGUMENT THAT SHAWN HAS RAISED IN HIS LETTERS. "Where?" In that excellent brief that I wrote for the Nevada Supreme Court – which brings us to our next point:

Eddie and Shawn, apparently, think very little of my short, handwritten appeal to the Supremes (Nevada Supremes). Once again, here is The Inside Dope: It is SHORT because that is all the space that is allowed. If either of you read the Instructions, they will NOT allow a single page BEYOND WHAT THEY PROVIDE. It is a prisoner's brief and that is exactly what I wrote. It took me over 3 (three weeks) just to read that damned transcript, 10 or 11 hours a day -what with notes, drafts, etc. I have NOT been paid a dime – and won't be for X (X - unknown) amount of months.

Next vitally important point on that brief that I sweated and sweated over – it is Shawn's ONLY HOPE, as a genuine lawyer's brief will be SHIT CANNED upon receipt. "Why?" Because – and this will be difficult for both of you – all the evidence in the transcript says Shawn K. Brown is (like my other ungrateful client) GUILTY AS HELL.

If I understand both of you correctly, Shawn's girlfriend (or at least one of them) is now claiming she will change her testimony. Gentlemen, I have heard that story before BUT give me her address (physical, internet address – whatever) and I shall contact her forthwith. If she has something other to say than "Gee, I'm sorry" – then it could trigger re-opening the case. Rather unlikely BUT it has happened before. Get to work and supply me with that information.

- Mr. Hungerford has stated in these proceedings: "I honored my oath, taken on January 12th, 1993, and gave [Mr. Brown] the best advice, counsel, research and composition possible under Brown's fraught legal conditions."
- Mr. Hungerford has never been licensed to practice law in Nevada and was not admitted *pro hac vice* in that jurisdiction for purposes of representing Mr. Brown.
- Mr. Brown filed the bar charge against Mr. Hungerford that is the subject of these proceedings.

Pursuant to Rule 42, Ariz. R. Sup. Ct., ER 8.5, the Nevada Rules of Professional Conduct apply here. Arizona's ER 8.5(b) states, in pertinent part:

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

The Nevada Supreme Court rules provide that, with exceptions not relevant here, "No person may practice law as an officer of the courts in this state who is not an active member of the state bar . . ." Rule 77, Nev. R. Sup. Ct. *See also* N.R.S. § 7.285 (a person shall not practice law in Nevada if the person "[i]s not an active member of the State Bar of Nevada or otherwise authorized to practice law in this state pursuant to the rules of the Supreme Court . . .").²

Nevada courts have broadly defined the unauthorized practice of law. In *In re Lerner*, 197 P.3d 1067, 1072 (Nev. 2008), for example, the Nevada Supreme Court stated:

² Mr. Hungerford's reliance on Nevada's Rule 5.5(b)(6) is misplaced. Rule 5.5 reads, in pertinent part:

(b) Exceptions. A lawyer who is not admitted in this jurisdiction, *but who is admitted and in good standing in another jurisdiction of the United States*, does not engage in the unauthorized practice of law in this jurisdiction when:

(6) The lawyer is representing a client, on an occasional basis and not as part of a regular or repetitive course of practice in this jurisdiction, in areas governed primarily by federal law, international law, or the law of a foreign nature . . ." (Emphasis added)

Because Mr. Hungerford was not "admitted and in good standing in another jurisdiction of the United States" when he represented Mr. Brown, this provision offers him no defense. *See also In re Lerner*, 197 P.3d 1067, 1077 (Nev. 2008) (holding that Rule 5.5(b) "sets forth limited exceptions to the unauthorized practice of law provision when the person engaging in the practice of law is licensed as an attorney in another jurisdiction.").

[T]he practice of law is implicated whenever a person is faced with a legal issue that cannot be handled by resort to routine forms or customs, and when the person makes the decision not to rely on his or her own judgment but to obtain assistance from someone else, a stranger to the situation.

See also Pioneer Title v. State Bar, 326 P.2d 408, 410 (Nev. 1958) (distinguishing between purely clerical services and providing “professional advice and assistance upon matters affecting one’s legal rights.”).

Based on the undisputed facts recited herein, and as a matter of law, Mr. Hungerford violated the following Nevada Rules of Professional Conduct:

Rule 5.5(a)(1): “A lawyer shall not . . . [p]ractice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction . . .”

Rule 5.5(c): “Notwithstanding the provisions of paragraph (b) of this Rule, a lawyer who is not admitted to practice in this jurisdiction shall not represent a client in this state in an action or proceeding governed by Supreme Court Rule 42 unless the lawyer has been authorized to appear under Supreme Court Rule 42 or reasonably expects to be so authorized.”

Rule 5.5(d)(2): “A lawyer who is not admitted to practice in this jurisdiction shall not: . . . [r]epresent or hold out to the public that the lawyer is admitted to practice law in this jurisdiction.”

Rule 8.4(c): It is professional misconduct for a lawyer to “[e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation . . .”

Based on the current record, the PDJ cannot conclude that, as a matter of law, Mr. Hungerford violated Nevada Rule 8.4(b) (Professional misconduct includes committing “a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.”).

For the reasons stated,

IT IS ORDERED granting the State Bar’s Motion for Summary Judgment in part and denying it in part. If the State Bar wishes to litigate the alleged violation of Rule 8.4(b), it may do so at the scheduled hearing on July 24, 2023. If, on the other hand, the State Bar elects not to pursue the remaining allegation, the Zoom hearing on July 24 will be converted to an aggravation/mitigation hearing based on the violations resolved herein, with the sole issue being the appropriate sanction to impose for those ethical violations. The State Bar shall advise Mr. Hungerford and the PDJ within five business days whether

it will litigate the alleged violation of Rule 8.4(b) at the hearing. Depending on the State Bar's decision, other pending motions will either be ruled on or deemed moot.

DATED this 26th day of June, 2023.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 26th day of June, 2023, to:

Robert Truman Hungerford
Rth3439@outlook.com

James D. Lee
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by: SHunt